



Smart Contracting – Is It Possible in Today's World?



Agenda

- Overview and Historical Success of Major Contracts
- Legal/Commercial Viewpoints
- Project Execution Viewpoints
- Discussion



In the Good Old' Days....

- Owners and Contractors Had **“Personal Relationships”**
- Profit and Contingency Were Not **“Dirty Words”**
- Liability Was Limited to **“Manageable Risks”**
- Catastrophic Risks Were **“Routinely Excluded”**





What Happened to the Good Old' Days?

- Owner and Contractor Relations Are **“Strained”** and Subs/Suppliers Feel **“Abused”**
- Owner’s Demand is **“Cut Your Price”**
- Disproportionate LDs and Increasingly **“Onerous”** Contracts





Historical Success

Lessons Learned from the Early 2000s

- Did Contractors Adopt the “Nothing Ventured, Nothing Gained” Slogan in the Boom Market?
- Or Was It “Promising More Than They Could Deliver”?
- Or Was It “Circumstances”?





Preventing Circumstances

Now, Let's Examine Legal/Commercial and Project Execution Issues That Could Prevent Circumstances” from Happening



Smart Contracting –

Execution and Performance Guarantees



Smart Contracting – Is It Possible in Today’s World?

Yes. Increasing Certainty by Focusing on Execution and Performance Guarantees Will Keep You Out of the Court Room!





Execution and Performance Guarantees

Information an Owner Can Provide to Increase Certainty

- It is Fundamental to the Success of **ANY** Contractor That Bids Are Based on a Well-Defined Scope With Clear and Distinct Limits of Responsibility
- Spend the \$\$\$ Upfront to Make Sure Your Requirements are Complete and Incorporated Into the Tender Documents
- Specifications have an Effect on Cost 1) Performance based Specifications allow the Contractor to offer Value Engineered features and 2) Prescriptive, Detailed Functional Specifications are Limiting.



Execution and Performance Guarantees

Information an Owner Can Provide to Increase Certainty

- Do **NOT** Ask the Contractor to Take Responsibility for Something on which He has No Control
- **Establish a Realistic Project Schedule and LD Levels.** Schedule Acceleration is a Death Spiral Where the Cost of Acceleration is Not Commensurate With the Schedule Improvement Achieved (Schedule LD's Should Approximate the Interest During Construction)



Execution and Performance Guarantees

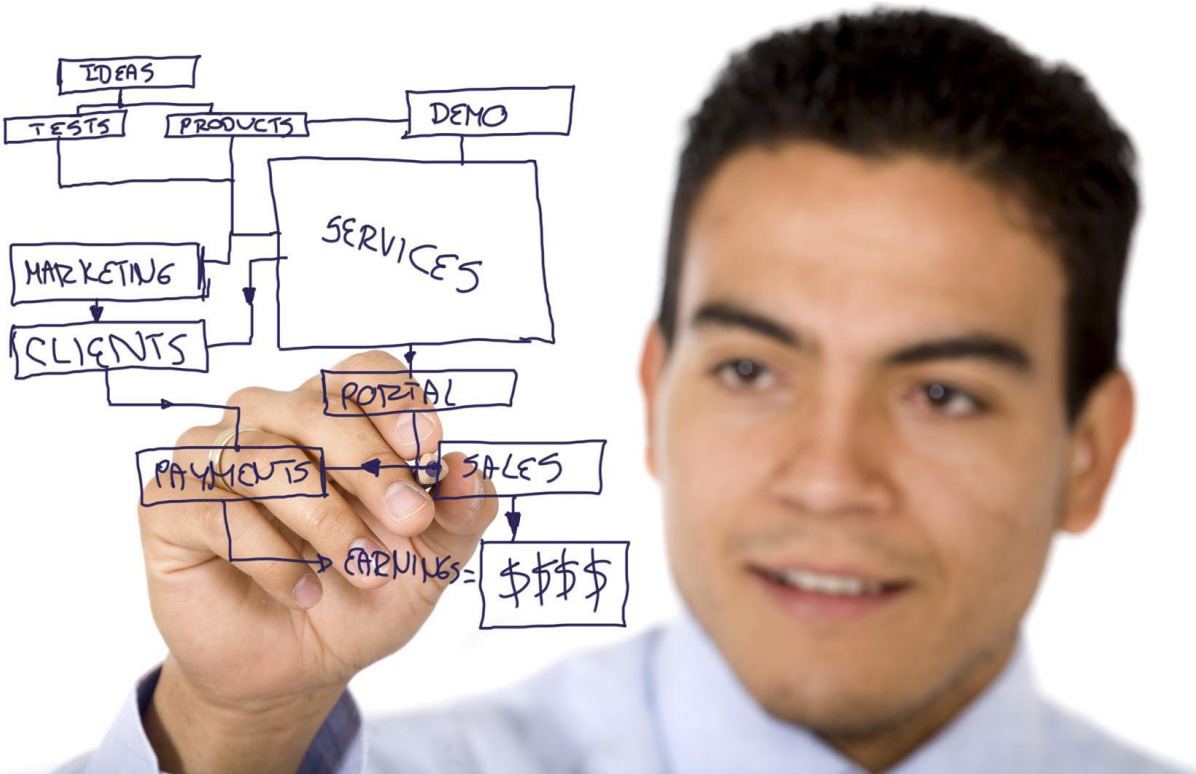
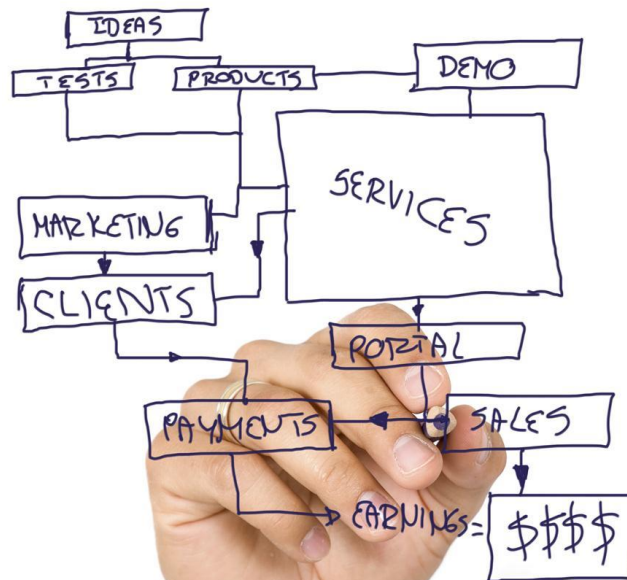
Information an Owner Can Provide to Increase Certainty

- Make Sure Your Performance Guarantees Are Reasonable and LD Levels Justifiable. The Contractor Will Add Contingency to Cover These Issues. The More Aggressive the Requested Guarantees and LD Levels, the More Contingency Will Be Adc





The Path to Smart Contracting





Smart Contracting Is Based On The Following:

Understanding the Project “Profile”



- Client
- Financing
- Technology
- “Macro” Environment

Commercial Relationships – Contracting Structures – Risk Management



Smart Contracting Sees Both Points of View

Owner and Contractor Perspectives





Objective of Smart Contracting

In a Word...





Risk Management in Smart Contracting

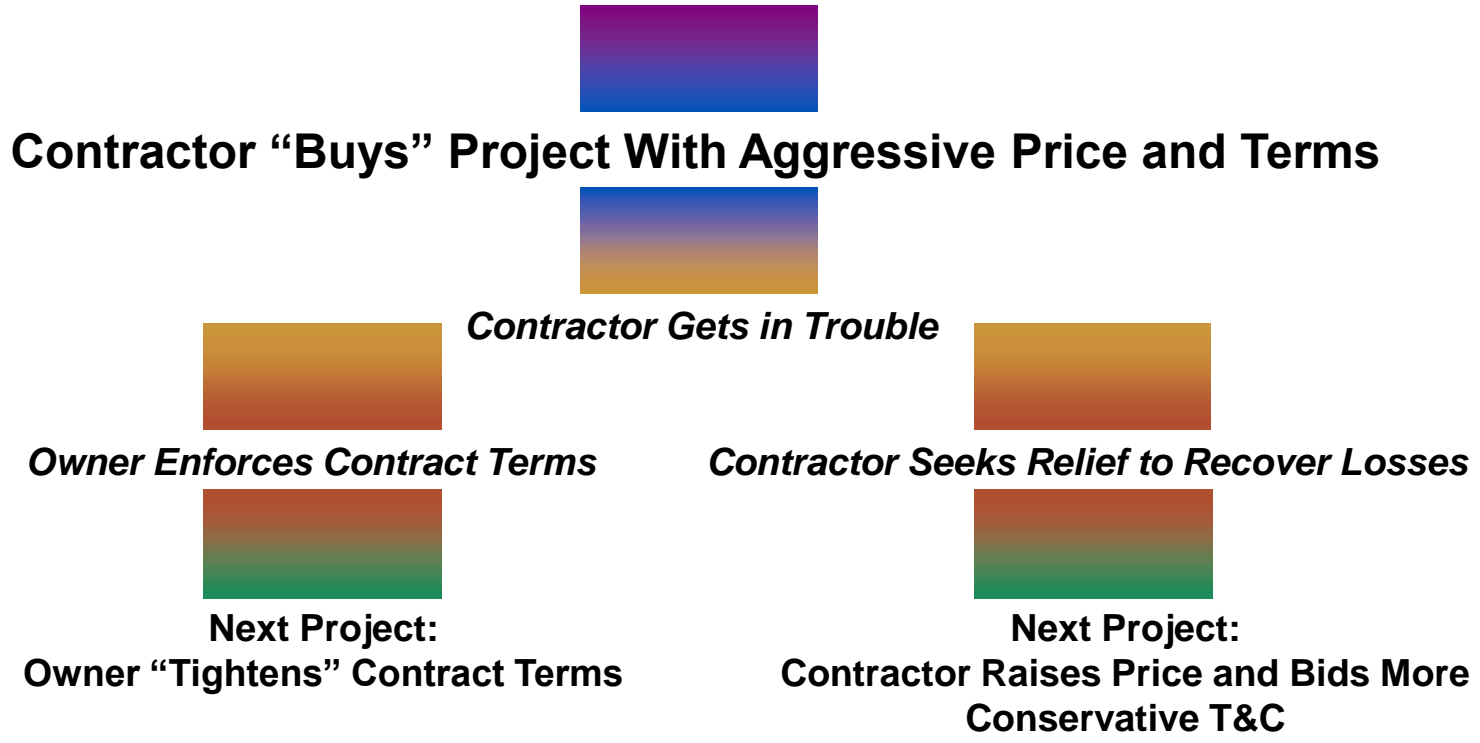
Contingency Is Not a Preferred Strategy

- Contractors Hope to Convert to Profit, But Worry About Competitiveness
- Owners Pressure Contractor to Reduce Contingency Rather Than Addressing Risk



The Path to Misalignment – Owner and Contractor Perspectives

Owner Seeks Project Execution Solution in Highly Competitive Market





When Does Alignment Between Owner and Contractor Occur?

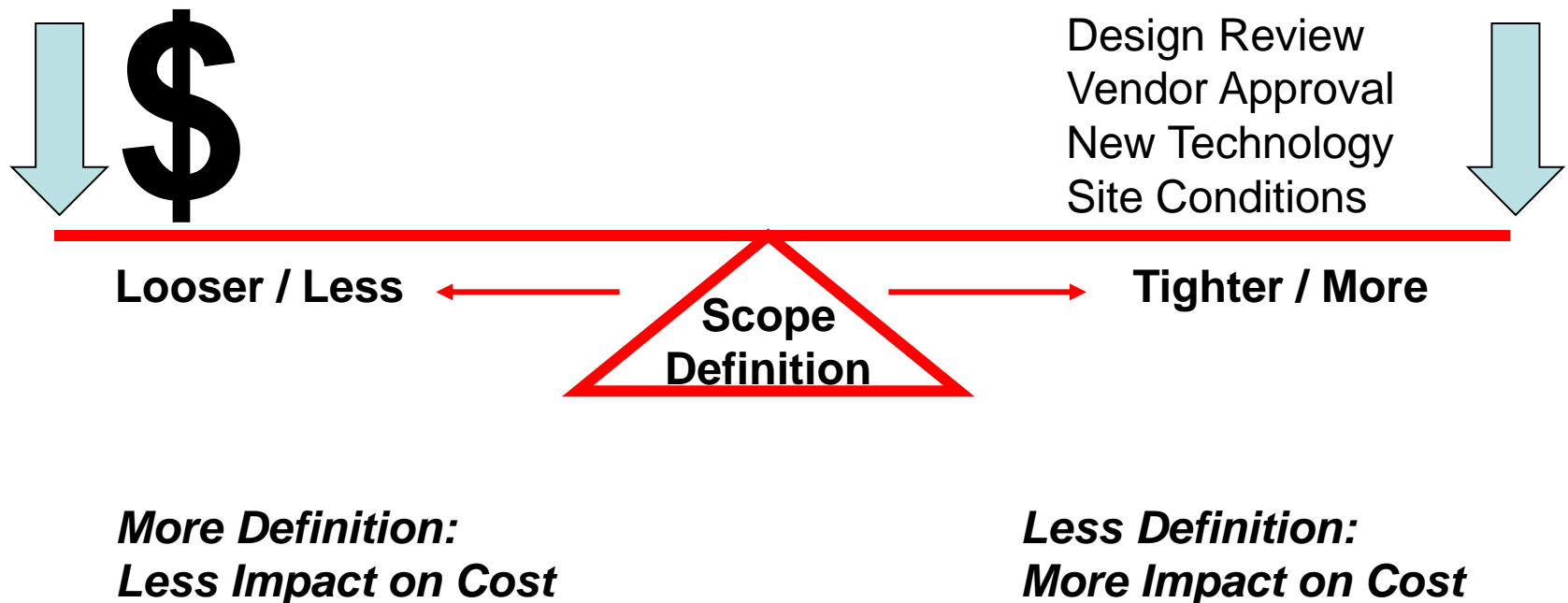
Interests Are Aligned if the Party With the Risk Also Has the Means to Mitigate:



- Scope Definition
- Ownership of Schedule “Float”
- Risk of Loss
- Contract Risk for Owner Provided Equipment



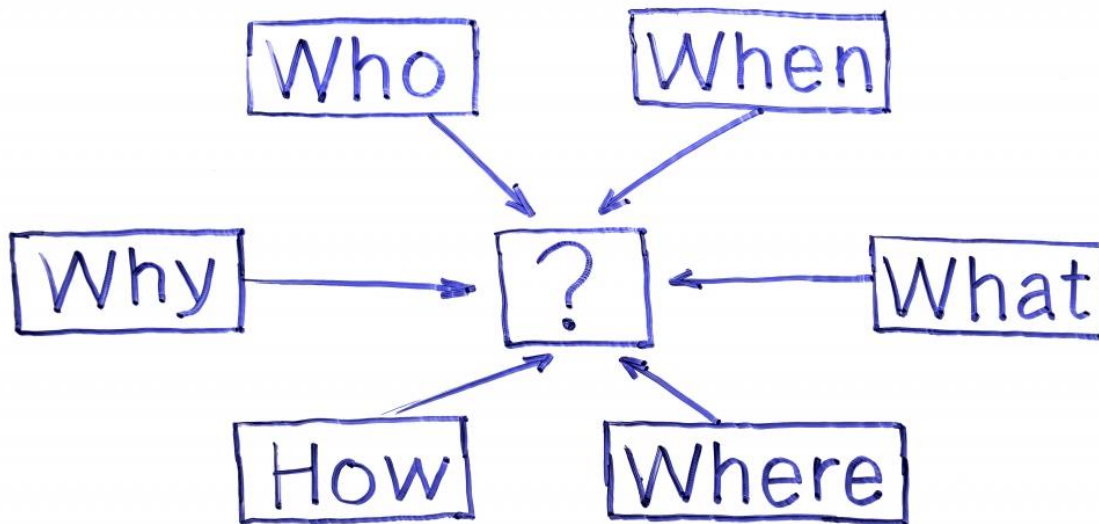
It's All About Scope (The Devil Is in the Details)



Smart Contracting Strives for Balance and Understanding



Smart Project Planning – Contractor Owns Its “Float”





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Smart Contracting Considers Commercial Relationships Beyond Fixed Price / Lump Sum



Choices Do Exist...

- “Multi-Prime”
- Target Cost / Fee “At Risk”
- Owner Furnished Major Equipment (With or Without Assignment of Contractor)



Summary

The Path to Smart Contracting Can Be (Relatively) Smooth and Straight If....

- Interests Are Aligned With Risks
- Proper Choice of Commercial Relationships

